

Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. See 86 Ill. Adm. Code 270.115. (This is a GIL).

January 26, 2000

Dear Xxxxx:

This letter is in response to your letter dated November 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, COMPANY we respectfully request the department issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

***General Information***

Enclosed please find an original Form IL-2848 Power of Attorney, authorizing BUSINESS to represent COMPANY (the 'Company') before the Illinois Department of Revenue (the 'Department').

This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailer's Occupation Tax consequences of the actual business practice of the Company.

The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter.

To the best knowledge of the Company's personnel, and to the best of our knowledge, the Department has not previously ruled regarding this matter for the Company. Neither the Company nor we have, at any time prior, submitted the same or similar issue to the Department.

The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, address, and the name of its representative be deleted.

***Statement of Material Facts***

The Company is engaged in the business of selling (at retail) computers and related equipment. The Company's headquarters ('Office A') is located in 'City A', Illinois and is within a Home Rule jurisdiction that imposes a Municipal Retailers Occupation Tax (HRMROT). The Company's internal computer programs that handle order entry, billing, and accounts receivables are maintained on servers located at Office A. Additionally, the order entry, credit, billing, and receivables personnel work from Office A. The Company maintains a second office in Illinois ('Office B') located in 'City B', Illinois. City B also imposes a HRMROT.

A customer wishing to purchase equipment from the Company requests pricing information from the Company's sales organization. The Company's personnel located in Office A, perform the credit review and, once credit is approved, prepare a fee quote and proposal letter outlining the details of the proposed transaction. The fee quote clearly states that the terms of the proposal are subject to approval by the Company's senior management. If the customer agrees to the terms outlined in the proposal, it submits the signed proposal to the Company's Office A.

Upon receipt of the signed proposal, the Company prepares a contract outlining the agreed terms of the transaction. The contract is forwarded to an authorized member of the Company's senior management team. The senior manager reviews the contract and if in agreement with the terms, signs the contract. The signed contract is then sent to the customer.

The signed contract represents the Company's complete and unconditional offer to sell the designated property to the customer and, by operation of law (Article 2 of the Uniform Commercial Code), becomes a binding contract upon acceptance by the customer. Acceptance may be effected only by an authorized officer, employee, or agent of the customer signing the original document and returning it to the Company.

Upon receipt of the signed contract from the Company, the customer reviews the contract, and if the terms are acceptable, signs and returns the contract to Office B via US Mail or facsimile. Upon receipt of the signed contract by the Company Representative in City B, the customer acquires a legal right to the specified goods. Receipt of the signed contract is the final thing necessary to bind the Company to the sale. The Company's personnel in Office B receive the contract, log its receipt and forward the contract to Office A where the order is released and the equipment is ordered from the manufacturer for delivery to the customer's location.

In certain instances, the proposal issued by the Company, contains the sale terms and conditions and serves as the contract. If the customer is in agreement with the proposal, they submit the signed proposal letter (a contract in this instance) to the Company at Office B.

The Company has also entered into Master Sales Agreements with certain customers. The signed Master Sales Agreements are submitted by the customer to Office A. At the

time a customer under a Master Sales Agreement wishes to acquire specific equipment, a purchase order, referencing the Master Sales Agreement, is submitted to the Company at Office B. The purchase order represents the customer's acceptance of the seller's complete and unconditional offer to sell the items identified on the purchase order under the terms outlined in the Master Sales Agreement. The purchase order is received by the Company's personnel in Office B, logged in as received and forwarded to Office A where the order is released for processing and billing.

In certain instances, the Company prepares and issues proposals referencing the Master Sales Agreements. If the customer is in agreement with the proposal, they return the signed proposal letter (a purchase order in this instance) to the Company at Office B. This order is logged as received at Office B and forwarded to Office A where the order is released for processing and billing.

### ***Issue***

Whether the receipt of a customer's acceptance of the Company's complete and unconditional offer to sell at Office B conclusively establishes Office B as the situs of the sale for Illinois Retailers' Occupation Tax ('ROT') purposes such that the state and local tax rate in effect in City B applies to the sale despite the other elements of the making of the sale that occur in City A.

Whether the receipt of purchase orders related to the Master Sales Agreements at Office B, conclusively establishes Office B as the situs of the sale for Illinois ROT.

### ***Relevant Authorities***

The ROT statutes do not specifically address the rules for determining the proper location of the sale. However, substantial guidance can be found in the regulations issued by the Department of Revenue for the local Home Rule Municipal, Home Rule County, Regional Transportation Authority, Metro East Transit District, and Special Purpose County Retailers' Occupation Taxes. In addition, administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. (Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon (1979), 75 Ill.2d 53, 18 Ill.2d, 496, 165 N.E.2d 305, 387 N.E.2d 320 (1979), *cert. Denied*, 444 U.S. 844, 62 L. Ed.2d 57, 100 S. Ct. 87).

Using consistent language, the local ROT regulations state that the Department considers the seller's acceptance of the purchase order or other contracting action in the making of the sales contract the most important single factor in the occupation of selling. Additionally, the regulations provide that if a purchase order *which is an acceptance of the seller's complete and unconditional offer to sell is received* by the seller's place of business or by someone working within a municipality that imposes HRMOT, the seller incurs HMROT liability in that jurisdiction. (86 Ill. Admin. Code Sec. 270.115).

Using identical language, the regulations state:

'Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of sections (f) and (g) of this section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

The Regulations further state that:

'Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailer's Occupation Taxes with respect to such orders.'

It appears that there are no previously issued letter rulings with the precise fact pattern as presented here. However, several rulings on this matter involved taxpayers with similar order acceptance procedures. These rulings indicate that the receipt of the customer's acceptance of the seller's complete and unconditional offer to sell at Office B conclusively establishes the situs of the sale in City B and, consequently, City B's HRMROT applies to the Company's sales.

In support of the ruling request, the following PLRs use consistent language stating, '...if a purchase order which is an acceptance of the seller's *complete and unconditional offer to sell is received by the seller's place of business* within the municipality or by someone working out of such place of business, the seller incurs ROT liability in the respective jurisdiction.'

In PLR-81-1566, the Department ruled that the Regional Transportation Authority ROT applied 'if the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business...or if a purchaser order which is an acceptance of the seller's complete and unconditional offer

to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

PLR 82-0405 also indicates that 'if the purchase order is accepted at the seller's place of business within the municipality and if the purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received within the municipality, the seller incurs Municipal Retailers' Occupation Tax on that liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

In PLR 83-0579, in addressing a taxpayer that was charging tax at a rate based on its customer's billing address, rather than its location in NAME1 County, the Department ruled that 'assuming that the purchase orders are accepted at the taxpayer's place of business within the City of NAME1, or by someone working out of such place of business, or if the purchase order which is an acceptance of the taxpayer's complete and unconditional offer to sell is received by the taxpayer within such City, the taxpayer incurs local sales taxes of the City of NAME1 if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

In PLR 90-0857, the Department states that 'in determining whether there will be liability for the Home Rule Municipal Retailers' Occupation Taxes, the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial. So long as your company does not have a place of business in a home rule municipality or salespersons who accept purchase orders for your company in a home rule municipality that imposes a tax, you will incur no local tax liability. It should be noted that the same considerations apply for other locally imposed taxes such as the Regional Transportation Authority Tax and the NAME2 County Water Commission Tax and the like.' Rather the Department determined that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business in the home rule municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability.'

The Company knows of no authority contrary to the above cited authorities.

### ***Conclusion***

The facts further indicate that a sale contract is not binding on the Company until the signed contract (or purchase order in the case of Master Sale Agreements) is received

by Office B and this is the final action necessary to bind the Company to the sales contract.

Therefore we respectfully request that the Department issue a ruling stating that the receipt of a customer's acceptance of the Company's unconditional offer to sell at Office B conclusively establishes City B as the proper situs of the sale for ROT purposes such that the state and local tax rate (including City B HRMROT) in effect in City B applies.

We are unable to grant you a Private Letter Ruling because COMPANY is currently under audit. Regarding your questions concerning jurisdiction issues and the imposition of local taxes in Illinois, see the enclosed copy of 86 Ill. Adm. Code 270.115 of the Home Rule Municipal Retailers' Occupation Tax. As you know, the Department looks to Section 270.115 as guidance in determining the situs of the retail sale for Retailers' Occupation Tax and Home Rule Municipal Retailers' Occupation Tax purposes. Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order, which is an acceptance of the seller's complete and unconditional offer to sell is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

You state that the contract signed by your client "represents the Company's complete and unconditional offer to sell the designated property to the customer." Further, you state that the contract becomes binding upon acceptance by the customer that "may be effected only by an authorized officer, employee, or agent of the customer signing the original document and returning it to the Company." Your letter also indicates that your client accepts receipt of all contracts at its office in City B, Illinois and that City B, Illinois imposes a Home Rule Municipal Retailers' Occupation Tax. Please note that receipt of an order is not necessarily acceptance. However, if when the order is received at City B, sellers become bound to perform the contract, without more, then a sale occurs in City B. If the contracts are thus accepted in City B, the state and local tax rate in effect in City B would be applied.

The next situation you describe involves a Master Sales Agreement. In your letter you state that the "signed Master Sales Agreements are submitted by the customer to Office A." You further state that if the customer wishes to purchase items pursuant to the terms of the Master Sales Agreement, it submits a purchase order to Company's office in City B. You state that the "purchase order represents the customer's acceptance of the seller's complete and unconditional offer to sell the items identified on the purchase order under the terms outlined in the Master Sales Agreement." If the purchase orders are accepted in City B, as discussed above, the state and local tax rate in effect in City B is to be applied. We are assuming that the customer is not obligated to purchase items pursuant to the Master Sales Agreement absent the acceptance of the purchase order. If the customer is obligated to purchase items under the Master Sales Agreement and the purchase order merely dictates the timing of the delivery of the items, the answer to your inquiry may be different.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.